MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the April 4, 2006 Task Force Meeting
DATE: April 22, 2006

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Harvey Hackett	Bitterroot Water Forum
Bill Slack	Flathead Joint Board of Control
Fred Lurie	Blackfoot Challenge
Matt Clifford	Clark Fork Coalition
Jim Dinsmore	Upper Clark Fork Steering Committee/Granite Conservation District
Elna Darrow	Flathead Basin Commission
Gail Patton	Sanders County
Marc M. Spratt	Flathead Conservation District/Flathead Chamber of Commerce

Ex Officio

Rep. Verdell Jackson	HD 6
Rep. Joey Jayne	HD 15
Rep. Gary MacLaren	HD 89

Staff:

Gerald Mueller	Consensus Associates
Mike McLane (DNRC)	Montana Department of Natural Resources and Conservation

Other:

Phil Tourangeau	Confederated Salish and Kootenai Tribes
Dr. David Shively	UM Geography Department
Susan Cottingham	Reserved Water Rights Compact Commission
Jody Miller	USFS
Tim Sullivan	USFS
Eric Johnston	USFS

Meeting Agenda

- Ground Water Conference Update
- DNRC Ground Water-Surface Water Working Group
- Dr. David Shively Presentation on Water Right Marketing in New Mexico
- State of Montana - USFS Water Right Compact
- Public Comment
- Schedule meeting

Ground Water Conference Discussion

Technical Conference - Gerald Mueller reported that he has made contact with University of Montana Geology Professor Bill Woessner and that the plan is to hold our technical conference in conjunction with the Riverene Center Conference this coming fall. An additional day will be added on Wednesday to address our subject and the conference would continue on Thursday and Friday. Space has been reserved in the University Center on the UM campus for our meeting. Mr. Mueller also passed out a pre-proposal for the pre-conference white paper prepared by Dr. Tom Patton of the Montana Bureau of Mines and Geology. The proposal is included below as Appendix 1. The Task Force reviewed and generally approved of the proposal. One comment on the proposal was to include information about the quality/scale/accuracy of the data available in each sub-basin. Another comment is that the Task Force intends the paper to have utility beyond the conference. For example, it should be a useful source of information about the basin's ground water for legislators and other policy makers and funders.

Since Dr. Patton's proposal included a $13,400 price tag, the Task Force also identified potential sources of funding, including: DNRC, the Natural Resources Damage Program (NRDP), the Bonneville Power Administration (BPA), and Avista and PPL Montana and the basin's rural electric cooperatives. Some portion of the conference expenses might also be covered by registration fees. Mr. Mueller was directed to write a letter seeking funding to the DNRC and a pre-proposal to the NRDP. He was also asked to contact Stan Bradshaw about BPA funds and Holly Franz and Steve Fry/Nate Hall about utility funding. Marc Spratt agreed to contact the Flathead Electric Cooperative.

Policy Conference - The Task Force reviewed the one page summary of the policy conference that had been previously circulated to its members. Task Force members made the following suggestions. First, realtors should be added as a targeted interest and a representative of the Montana Association of Realtors should added to the Panel 2. Second, the conference day should be structured so that the morning is dedicated to first looking at population and economic trends and then asking Panels 1-3 to describe their existing water supply problems and their future expectations. The afternoon would be dedicated to a discussion of how the water appropriation and management system is changing, the Task Force's Hungry Horse initiative, and possible steps to address problems and prepare for the future.

DNRC Ground Water-Surface Water Working Group Recommendations

Mike McLane passed out copies of his March 3, 2006 memorandum to Mary Sexton explaining the recommendations of the Ground Water-Surface Water Working Group (Working Group) as well as draft statutory language to implement them. The draft statutory language is included below in Appendix 2. These recommendations were presented to the Environmental Quality Council at its March meeting. Although they had previously signed off on them, three agriculture groups stated at the meeting that they had concerns with language requiring augmentation to prevent depletions to surface water. These groups agreed to another Working Group meeting to seek a solution that would address their concerns. A meeting is scheduled for this purpose on April 6. The Task Force decided to await the outcome of this meeting before deciding whether to take a position on the Working Group recommendations.

Dr. David Shively Presentation

Dr. David Shively, an Assistant Professor of Geography at UM, summarized research he conducted for his doctorate on the effects of water marketing on third parties in New Mexico. New Mexico has water right laws generally similar to Montana's, including requirements for water right transfers. Unlike Montana, New Mexico does require a finding that a transfer be in the public interest. New Mexico has experienced numerous water right transfers from agriculture to municipal and mining uses. The water right purchases have generally involved

smaller agriculture operators. Dr. Shively continues to be interested in water use and would welcome an opportunity in the future to work with the Task Force on issues of mutual interest.

State of Montana - USFS Water Right Compact

Susan Cottingham, with the Montana Reserved Water Rights Compact Commission, and Jody Miller, Tim Sullivan, and Eric Johnston of the United States Forest Service (USFS) summarized the State-USFS negotiations towards a compact. Because USFS lands in Montana involve 750 watersheds, the state requested and the USFS has agreed not to pursue reserved water rights for instream flows on all USFS lands. Specific water rights will be sought for consumptive uses for ranger stations, camp grounds, fire fighting, etc., and an instream flow right will be established for the wild and scenic portion of the south fork of the Flathead River. The state has suggested that instead of instream flow rights with priority dates stemming from the time of the creation of each national forest for all lands but the south fork of the Flathead, that the USFS pursue instream flow reservations. The reservations would have priority dates determined by the date of the reservation applications. The state is convinced that in practice a water reservation would not be significantly different from an instream flow water right because the forests are almost always above diversionary uses. Also, the USFS controls use of its lands through special use permits. The state and USFS are discussing a sequencing that would require an applicant for permit for a new water use to obtain the appropriate special use permit before seeking the water right permit. The sequencing would apply for new water uses on USFS lands or when water would be conveyed across such lands for use on private lands intermingled with USFS lands. The amount of the water reservation on a given stream would be determined using the "wetted perimeter" technique developed by the Montana Department of Fish, Wildlife, and Parks to assess and meet the needs of the fishery. The wetted-perimeter technique identifies two flow values, a low flow associated with minimum fishery needs and a higher value that would allow the fishery to thrive. The USFS has identified about twenty watersheds in which a threatened or endangered or other high value fishery is significantly at risk. The state has agreed that the water reservation in these watersheds should be based on the wetted perimeter higher flow value. The state and the USFS are concerned about how basin closures would affect water reservation applications. For example, the upper Clark Fork River basin has a permit closure that precludes water reservation applications. Other areas of the Clark Fork basin have temporary closures with expirations triggered by completion of the state-wide water rights adjudication. The state and the USFS are considering whether exemptions to the closures may be needed. The negotiations are ongoing and no final decisions have been reached. The state hopes to have a compact completed with the USFS in 2007.

Public Comment

There was no additional comment.

Next Meeting

The next meeting scheduled for the first Monday in May, May 1. The agenda topics will include: the Hungry Horse negotiations, the ground water technical and policy conferences, the inter-state water allocation of water, and the Surface/Ground Water Working Group recommendations. Jack Stultz, DNRC Water Resources Division Administrator, who was unable to attend today's meeting, will be invited to discuss the inter-state water allocation topic.

Appendix 1
Pre-proposal:
to the
Clark Fork River Basin Task Force
for preparation of a

Ground-Water Resource Overview: Clark Fork Basin, Montana

by
Thomas W. Patton
Montana Bureau of Mines and Geology
April 2006

Introduction:

The Clark Fork River Basin Task Force plans to host a conference in the fall of 2006 for agency and private sector hydrologists, university scientists, well drillers, policymakers, and planners. The issues listed below, among others, will be discussed.

- What is known about the Clark Fork River Basin's ground water and its interaction with surface water?
- What/where are the aquifers?
- What do we need to know?
- How do we acquire that information?
- How do we handle the information?

The task force would like conference attendees to have a consistent set of basic information about the river basin's ground-water resources and has asked the Montana Bureau of Mines and Geology (MBMG) to prepare an overview of the ground-water resources covering the topics listed below:

Part 1: On a basin-wide scale

Using available geologic mapping, data from the Ground-Water Information Center (GWIC) database, data sets collected by the Ground-Water Assessment Program in the Flathead Lake, Lolo-Bitterroot, and Upper Clark Fork characterization areas, and data from the statewide water-level monitoring network, MBMG will develop a basin-wide summary that includes:

- Aquifer descriptions generally based on geologic mapping of Quaternary, Tertiary basin-fill sedimentary rocks, and bedrock. Illustrations could include:
  1. A location map showing the Clark Fork basin in Montana.
  2. Table of hydrogeologic properties including approximate geographic extents, general thicknesses (where data are available), geologic materials, expected well yields, etc.
  3. A basin map showing the approximate extent of aquifers based on geologic mapping. The map will likely be on a hill-shade base and will emphasize Quaternary, Tertiary basin-fill, and bedrock geology.

- Generalized descriptions of ground-water flow from areas of recharge, to areas of discharge. Illustrations could include:

1. Recharge scenarios including irrigation, precipitation, mountain front, and losing streams.
2. Discharge scenarios including pumping wells, gaining streams, and evapo-transpiration.

- A discussion of ground-water storage trends based on water-level records from statewide monitoring well locations. Illustrations could include:
  1. A map showing locations of long-term statewide monitoring wells and period of record. Possibly including net change from beginning of record or departure from decadal average?
  2. Hydrographs from selected monitoring wells showing typical patterns and magnitudes of seasonal water-level change.

Part 2: sub basin summaries:

- Clark Fork River above the Blackfoot River (Deer Lodge, Rocker, Silver Bow valleys)
- Clark Fork River between Flathead and Blackfoot Rivers (Missoula Valley)
- Clark Fork River below Flathead River
- Flathead River above Perma. Montana
- Bitterroot River
- Blackfoot River, and the
- Rock Creek and Flint Creek drainages

The basins listed above would be summarized by discussing the geographic distribution of wells, well depths and yields; basin-wide drilling rates by year, the development rate in bedrock aquifers, water-quality statistics by aquifer, and well-use as reported by well logs. Illustrations could include:

1. A dot map showing raw distribution of wells on a geologic base (hillshade topography option). Also could possibly develop density of wells per section maps or statistics. Could develop statistics on the number of wells within a buffer distance of major streams.
2. Distribution of wells with depth through histograms and pie charts.
3. Yield statistics based on clipping the wells data using Quaternary, Tertiary basin-fill, and bedrock geographic extents (box plots).
4. Rate of new well drilling by year (histograms showing rate of development through cumulative curves) (histograms showing number of wells in bedrock at different times).
5. Water quality based on historic analyses available in GWIC, including – box plots showing dissolved constituents? Nitrate distribution dot map?

Format:

We are envisioning an illustrated document of about 15-20 pages. Each sub-basin would get 2+/- pages of text and illustrations depending on the amount of data available. The basin-wide overview would be 3-4 pages long. MBMG would produce the report for the conference and to be released within MBMG's Ground-Water Open File (GWOOF) series. We are currently thinking one-color printing but some sections of two-color might be possible depending on the

data, the layout, and the cost. An example of the type/quality of production is shown in MBMG Information Pamphlet 4 (IP-04).

Budget:

Personnel	**Total**
Hydrogeologist – 2 months	$ 7,776
Report production	$ 568
Benefits	$ 3,167
Operations	
Printing charges – 250 copies at 7.50/copy	$ 1,875
Totals	$13,386

We estimate that it will take a hydrogeologist 2 work months to download and groom GWIC data, create the illustrations, maps, and tables; and write the manuscript. MBMG is assuming that the funding would come from the Department of Natural Resources and Conservation (DNRC) and be considered state dollars. Other project agreements between MBMG and DNRC (Renewable Resource Grants, etc.) do not allow indirect costs in their budgets, but if funds for the report come from other sources, MBMG and Montana Tech policy may require that indirect costs be added. Should the Clark Fork Task Force desire to proceed with the project, a more detailed budget would be included in a formal agreement between MBMG and the Task Force.

Appendix 2
Surface Water/Ground Water Work Group
Recommend for Statutory Change
Augmentation, Ground Water Analysis & Basin Closure Amendments
March 3, 2006

85-2-102 New Definition: "Augmentation Plan" means an arrangement, either temporary or permanent, to make water available for a new beneficial use in a water source or tributary through the development of a new or alternative water supply that reasonably prevents depletions to surface water where required or adverse effect to any water rights, or both.

New Section: "Municipality" means any incorporated city or town in the state organized and incorporated under Tide 7 chapter 2 Montana Code Annotated.

New Section: "Stock water" means the use of water to provide drinking water for livestock which includes, but is not limited to, cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter. the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use:

(b) in the case of a public agency, to reserve water in accordance with 85-2-316:

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; or

(d) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 35-2-141:

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(e) a use of water for augmentation.

85-2-329. Definitions. Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application tor a beneficial water use pennit pursuant to 84-3-302 or a state water reservation pursuant to 85-2-316.

~~(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.~~

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in

the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream condition.

(4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.

85-2-330. Basin closure-- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate round water when the application is accompanied by the report and augmentation plan as required by 85-2-337;

(b) an application for a permit to appropriate water for a nonconsumptive hydropower use:

(c) an application for a permit to appropriate surface water for ~~domestic, municipal~~ municipalities or stock use;

(d) an application to store water during high spring flows in an impoundment with a capacity of 30 acre-feet or more; or

(e) emergency temporary appropriations as provided for in 85-2-113 (3).

(f) An application a permit to appropriate surface water to conduct response actions related to natural resource restoration required as

i) remedial actions pursuant to the federal Comprehensive Environmental Response , Compensation, and Liability Act of 1980, as amended.

ii) Aquatic Resources mitigation activities done in compliance with and as required by Federal Clean Water Act of 1977 (33 USC 1251- 1376), or

iii) remedial actions taken pursuant to Title 73, chapter 10, part 7 under Montana law.

A permit issued to conduct mitigation or remedial actions may not be used for dilution.

(3) A change of use authorization for changing the purpose of use may not he issued any permit issued pursuant to subsections 2 b, c, e, and f.

85-2-335. Definitions. Unless the context requires otherwise, in 85-2-335 through 85-2-338, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

(2) "Upper Clark Fork Riser basin" means the drainage area of the Clark Fork River and its tributaries above Milltown dam.

85-2-336. Basin closure--exception. (1) As provided in 35-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (I) do not apply to:

(a) an application for a permit to appropriate around water when the application is accompanied by the report and augmentation plan as required by 85-2-337;

(b) an application filed prior to January 1, 2000, for a permit to appropriate surface water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. or Title 75, chapter 10. part 7 at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not he used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not he transferred to any person for any purpose other than the designated response

or remedial action.

(c) an application for a permit to appropriate surface water to conduct aquatic resources mitigation activities done in compliance with and as required by Federal C1ean Water Act of 1977 (33 USC 1251- 1376). A permit issued to conduct mitigation actions may not he used for dilution.

(~~e~~ d) an application for a permit to appropriate surface water for stock use:

(~~d~~ e) an application to store water during high spring flows in an impoundment with capacity of 50 acre-feet or more; or

(~~e~~ f) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsections 2 b, c, d, and f.

(3) Applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1,1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

(4) The department may not process or approve applications for state water reservations in the Upper Clark Fork River basin riled pursuant to 85-2-316.

85-2-337. Ground water permit applications -- report required. (1) During the period of basin closure provided in 85-2-330, 85-2-336(1), 85-2-340, 85-2-342, 85-2-344, or any administratively closed basin pursuant to 85-2-319, an applicant for a ground water permit in ~~the Upper Clark Fork River~~ a closed basin shall submit a report prepared by a ~~professional engineer or hydrologist~~ person educated and experienced in ground water science, ~~addressing~~ that analyzes the ~~hvdrologic~~ hydraulic connection between the source of the ground water and surthce water and that quantifies depletions to surface water that result from the proposed appropriation. If the applicant fails to submit the report required in this section, the application is considered defective and must be processed pursuant to 85-2-301.

~~(2) Except as provided in subsection (3), the department may not issue a permit to appropriate ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the source of the ground water is not a part of or substantially connected to surface water.~~

(~~3~~) The department may issue a permit to appropriate ground water if the application includes an augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311,that the augmentation plan provides for sufficient augmentation water in amount, time, and location to ~~replace~~ reasonably prevent depletions to surface water ~~senior water rights~~.

(3) Where an augmentation plan requires an "Application for Change of Appropriation Right under 85-2-402, that change application will be submitted with the "Application for Beneficial Water Use Permit" and its attached hydrologic report and augmentation plan. These applications will be evaluated in a combined proceeding.

85-2-339. Terminated. Sec. 6. Ch. 281. L. 1999.

85-2-340. Definitions. Unless the context requires otherwise, in 83-2-341 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

~~(2) "Ground water" means that water that is beneath the land or beneath the bed of a stream, lake, reservoir, other body of surface water and that is not immediately or directly connected to surface water.~~

(3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply. causing little or no disruption in stream conditions.

85-2-341. Basin closure-- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section the department may not process or grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate around water when the application is accompanied by the report and augmentation plan as required by 85-2-337;

(b) an application for a permit to appropriate water for a nonconsumptive hydropower use;

(c) an application for a permit to appropriate surface water for ~~domestic, municipal,~~ municipalities or stock use;

(d) an application to store water during high spring flows in an impoundment with a capacity of 50 acre- feet or more; or

(e) temporary emergency appropriations as provided for in 85-2-113(3).

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required as

i) remedial actions pursuant to the federal Comprehensive Environmental Response , Compensation, and Liability Act of 1980, as amended,

ii) Aquatic Resources mitigation activities done in compliance with and as required by Federal Clean Water Act of 1977 (33 USC 1251- 1376), or

iii) remedial actions taken pursuant to Title 73, chapter 10, part 7 under Montana law. A permit issued to conduct mitigation or remedial actions may not be used for dilution.

(3) A change of use authorization for changing the purpose of use may not he issued any permit issued pursuant to subsections 2 b, c, e, and f.

85-2-342. Definitions. Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) "Applications" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

~~(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of water and that is not immediately or directly connected to surface water~~.

(3) "Nonsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply causing little or no disruption in stream conditions.

(4) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam.

85-2-343. Basin closure-- exceptions. (1) As provided in 85-2-319 and subject to the provisions

of subsection (2) of this section the department may not process or grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate around water when the application is accompanied by the report and augmentation plan as required by 85-2-337;

(b) an application for a permit to appropriate water for a nonconsumptive hydropower use;

(c) an application for a permit to appropriate surface water for ~~domestic, municipal,~~ municipalities or stock use;

(d) an application to store water during high spring flows in an impoundment with a capacity of 50 acre- feet or more; or

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; or

(f) temporary emergency appropriations as provided for in 85-2-113(3).

(g) An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required as

i) remedial actions pursuant to the federal Comprehensive Environmental Response , Compensation, and Liability Act of 1980, as amended,

ii) Aquatic Resources mitigation activities done in compliance with and as required by Federal Clean Water Act of 1977 (33 USC 1251- 1376), or

iii) remedial actions taken pursuant to Title 73, chapter 10, part 7 under Montana law. A permit issued to conduct mitigation or remedial actions may not be used for dilution.

(3) A change of use authorization for changing the purpose of use may not he issued any permit issued pursuant to subsections 2 b, c, e, f, and g.

85-2-344. Bitterroot River subbasin temporary closure--definitions--exceptions.

(1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302; or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin'' means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin. designated as "Subbasin 76HA";

(ii) the north end subbasin. designated as "Subbasin 76HB":

(iii) the cast side subbasin, designated as "Subbasin 76HC";

(iv) the southeast subbasin. designated as "Subbasin 76HD":

(v) the south end subbasin, designated as "Subbasin 76HE";

(vi) the southwest subbasin. designated as "Subbasin 76HF";

(vii) the west central subbasin. designated as "Subbasin 76HG"; or

(viii) the northwest subbasin. designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not processor grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (3) of this section, except for:

(a) an application for a permit to appropriate ground water when the application is

accompanied by the report and augmentation plan as required by 85-2-337;

(b) an application for a permit to appropriate surface water for a ~~municipal~~ a municipality's water supply:

(c) temporary emergency appropriations pursuant to 85-2-113 (3); or

(d) an application to store water during high spring flow in an impoundment with a capacity of 30 acre-feet or more.

(e An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required as

i) remedial actions pursuant to the federal Comprehensive Environmental Response , Compensation, and Liability Act of 1980, as amended,

ii) Aquatic Resources mitigation activities done in compliance with and as required by Federal Clean Water Act of 1977 (33 USC 1251- 1376), or

iii) remedial actions taken pursuant to Title 73, chapter 10, part 7 under Montana law. A permit issued to conduct mitigation or remedial actions may not be used for dilution.

(3) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406 (4).

(5) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsections 2 b, c, and e.